

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

ANTHONY L. EVANS,

Plaintiff,

vs.

MIKE FERRITER (Director of
Montana Dept. of Corrections) and
LEROY KIRKEGARD (Warden of
Montana State Prison),

Defendants.

CV 17-80-H-BMM

ORDER

Plaintiff Anthony Evans (Evans) is a state prisoner proceeding *pro se*. Evans filed a Complaint on July 14, 2017. (Doc. 2). The named Defendants are Mike Ferriter, the Director of the Montana Department of Corrections, and Leroy Kirkegard, the Warden at the Montana State Prison. Evans alleges that the Defendants violated his rights under the United States Constitution in contravention of 42 U.S.C. § 1983 by failing to protect him while he was incarcerated at the Montana State Prison between January 2012 and July 2015. (Doc. 2 at 6).

United States Magistrate Judge John Johnston conducted an initial screening of Evans's Complaint under 28 U.S.C. § 1915 on January 30, 2018. (Doc. 8).

Judge Johnston determined that the Complaint failed to state a claim upon which relief may be granted. (Doc. 8 at 10). Judge Johnston explained why the Complaint failed to state a cognizable claim for relief under federal law. (Doc. 8 at 2-10).

Judge Johnston gave Evans an opportunity to cure the defects in his Complaint.

Judge Johnston directed Evans to file an amended complaint on or before February 28, 2018. (Doc. 8 at 12). Judge Johnston informed Evans that this action may be dismissed if he failed to comply with the Court's Order. *Id.* Evans did not file an amended complaint.

Judge Johnston issued Findings and Recommendations in this matter on April 9, 2018. (Doc. 9). Judge Johnston recommended that Evans's Complaint be dismissed for failure to state a federal claim. (Doc. 9 at 2). Evans did not file objections to Judge Johnston's Findings and Recommendations.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

Accordingly, IT IS ORDERED:

1. Evans's Complaint (Doc. 2) is DISMISSED with prejudice.
2. The filing of this action counts as one strike for failure to state a claim

upon which relief may be granted. 28 U.S.C. § 1915(g).

3. Any appeal of this decision would not be taken in good faith as Evans's claims lack arguable substance in law or fact.

4. The Clerk is directed to enter judgment accordingly.

DATED this 30th day of April, 2018.



Brian Morris
United States District Court Judge